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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/698,309	10/31/2003	Robert Richard Dykstra	9085M	1402
27752 7590 08/03/2007 THE PROCTER & GAMBLE COMPANY INTELLECTUAL PROPERTY DIVISION - WEST BLDG. WINTON HILL BUSINESS CENTER - BOX 412 6250 CENTER HILL AVENUE CINCINNATI, OH 45224				
			EXAMINER SILVERMAN, ERIC E	
			ART UNIT 1615	PAPER NUMBER
			MAIL DATE 08/03/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/698,309

Applicant(s)

DYKSTRA ET AL.

Examiner

Eric E. Silverman, PhD

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 May 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6-14-04, 6-28-04, 3-25-04</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Applicants' arguments filed on 5/24/2007 have been considered and are partially persuasive. Accordingly, the more detailed election requirement, which resulted in the election of a polymer containing 95% methyl methacrylate and 5% dimethylaminoethyl methacrylate is withdrawn. However, the election/restriction requirement mailed on 2/1/2007, and the election without traverse of a methacrylate containing polymer on 3/19/2007 remains in force.

Pursuant to the amendment, claims 1 – 17 are pending in this action.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 – 17 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1 – 5, 7 – 9, 12 –

17 of copending Application No. 10/698,871. Although the conflicting claims are not identical, they are not patentably distinct from each other because instant claims do not require that the cationic polymer (called cationic deposition polymer in copending claims) be aggregated with the perfume polymeric particles. Thus, copending claims are a species of instant genus claims, thus rendering instant claims obvious in their entirety.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 - 17 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1 and 16 require that the polymer contain both a non-ionic and an anionic monomer. These claims also require either an anionic or nonionic polymer. However, it is unclear how the final polymer could be nonionic if it must contain at least one anionic monomer. Clarification is requested. The remaining claims are rejected for depending on either claim 1 or 16 without clarifying this issue.

Claim Rejections - 35 USC § 102

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 – 3, and 8 – 17 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 925 776 A2.

Claim 1 requires a composition comprising a personal care adjunct ingredient (cosmetic excipient) and a perfume polymer particle. The perfume polymer particle has a polymer comprising an anionic monomer and a nonionic monomer and one or more raw perfume materials having certain perfume properties. Claim 2 requires that the composition have 0.1% by weight or more of the perfume raw material. Claims 3 further specifies the perfume properties of the fragrance. Claims 8 – 11 further specify the nature of the polymer, which is understood to read on the elected species of polymers comprising a methyl methacrylate monomer. Claims 12 – 15 further specify the properties of the perfume material. Claims 16 and 17 are similar to claim 1, but specify somewhat different properties of the perfume material.

Note that this rejection is applied to the generic claims, but not to the elected species of polymers including methyl methacrylate.

The EP reference teaches imprinting polymers with odiferous substances, such as perfumes (Example 3 and 4). In example 3, the imprinted polymer is ground into particles, thus describing the perfume particles of instant claims. The polymers used include monomers of methacrylic acid, an anionic monomer (at a minimum, it is anionic in aqueous media) and ethylene glycol dimethacrylate (examples 3 and 4), a neutral monomer. These polymers also read on the polymers of claims 8 – 11 (claims 9 and 8 read on “methyl acrylate” polymers, and claims 10 – 11 require that the polymers be anionic and water insoluble – instant polymers have a bi-functional monomer (ethylene

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glycol dimethacrylate) and are thus understood to be cross-linked and non-water soluble). Example 3 teaches that the material is for use in deodorants, and as such, addition of personal care adjunct ingredients are immediately envisaged by the artisan. This is also true of Example 4, which teaches the material to be used for cosmetics. In these examples, the amount of perfume raw material (3-methyl-2-hexanoic acid in example 3 and citronellol in example 4) is greater than 0.1% by weight, as required by instant claim 2. The fragrance properties of the perfume are understood to be commensurate with those required by instant claims.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

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Claims 1 – 5, and 8 – 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 925 776 A2. This rejection reads on the elected species of polymers that contain methyl methacrylate.

The limitations of these claims 1 – 3, and 8 – 16 were discussed above.

Claim 4 requires that the polymer contain a cationic component, and claim 5 further specifies the nature of this component.

Some of the teachings of EP were discussed above.

These teachings do not include cationic monomers in the polymers, or methyl methacrylate containing polymers.

EP also teaches that it may be useful to copolymerize other monomers with methacrylic acid in order to alter the rigidity of the copolymeric matrix. Methyl methacrylate and salts of quaternized ammonium methyl methacrylate are suggested (paragraphs 0015 – 0017).

It would be prime facie obvious to a person of ordinary skill in the art at the time of the invention to use methyl methacrylate and/or salts of quaternized ammonium methyl methacrylates as comonomers in the polymers of EP. The motivation is to alter and improve the rigidity of the final polymer product, according to the intended use. Since this manipulation is expressly suggested by the prior art, the artisan would enjoy a reasonable expectation of success.

Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 925 776 A2 in view of US 5,543,074 to Hague et al.

Claim 6 requires a cationic deposition polymer that is aggregated with the perfume polymer particle. Claim 7 specifies properties of the cationic deposition polymer.

The teachings of EP were discussed above. What is lacking is a cationic deposition polymer.

Hague teaches the use of cationic deposition polymers in cosmetic compositions (abstract). The use of such is beneficial because it promotes the deposition of composition onto the skin or hair during use of the cosmetic composition. The cationic deposition polymers of Hague are believed to have the properties of instant claim 7, since their structure is commensurate with the structures required by instant claims (that is, they are cationic).

It would be prime facie obvious to a person of ordinary skill in the art at the time of the invention to use a cationic deposition particle in the composition of EP. The motivation comes from Hague, who teaches that this improves the deposition of cosmetics onto hair and skin. Since Hague teaches how use these materials, the artisan would enjoy a reasonable expectation of success.

Conclusion

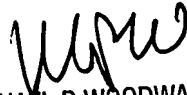
No claims are allowedAny inquiry concerning this communication or earlier communications from the examiner should be directed to Eric E. Silverman, PhD whose telephone number is 571 272 5549. The examiner can normally be reached on Monday to Friday 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571 272 8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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